

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION: 04-CV-11069-JLT

ABRAHAM PHILIP, M.D.
Plaintiff,

v.

JOHN CRONIN,
Defendant.

**MOTION OF DEFENDANT JOHN CRONIN FOR SUMMARY JUDGMENT UNDER
F.R.C.P. 56**

Now comes the Defendant John Cronin and moves, pursuant to F.R.C.P. 56, that this Court enter Summary Judgment in his favor with respect to all Counts of the Plaintiff's Amended Complaint. In support of this Motion, Defendant states as follows:

- I. DEFENDANT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW ON COUNT I WHERE PLAINTIFF HAS FAILED TO ESTABLISH THAT THE STATEMENTS AT ISSUE WERE WITH RESPECT TO "MATTERS OF PUBLIC CONCERN."
- II. DEFENDANT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW ON COUNT I WHERE PLAINTIFF HAS FAILED TO ESTABLISH A CAUSAL LINK BETWEEN THE ALLEGED PROTECTED EXPRESSION AND THE TERMINATION OF HIS EMPLOYMENT CONTRACT.
- III. DEFENDANT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW ON COUNT I WHERE DEFENDANT HAS DEMONSTRATED THAT THE DECISION TO TERMINATE PLAINTIFF'S CONTRACT WOULD HAVE BEEN THE SAME REGARDLESS OF PLAINTIFF'S ALLEGEDLY PROTECTED SPEECH
- IV. DEFENDANT IS ENTITLED TO SUMMARY JUDGMENT ON COUNT II WHERE DEFENDANT WAS ACTING AS AN AGENT OF THE COMMONWEALTH IN PARTICIPATING IN THE DECISION TO TERMINATE PLAINTIFF'S CONTRACT;

AND WHERE PLAINTIFF HAS NOT DEMONSTRATED ACTUAL MALICE ON THE PART OF THE DEFENDANT.

- V. AS A MATTER OF LAW, THE FACTS ALLEGED IN COUNT III OF PLAINTIFF'S AMENDED COMPLAINT DO NOT SUPPORT A CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS; AND THIS COURT SHOULD ENTER SUMMARY JUDGMENT IN FAVOR OF THE DEFENDANT WITH RESPECT TO THAT COUNT

In support of his Motion, Defendant relies upon the Statement of Undisputed Facts; the Opposition and Supplemental Opposition to Plaintiff's Motion for Partial Summary Judgment and Exhibits thereto; and the Memorandum and Statement of Reasons in Support of the Motion.

CONCLUSION

For the foregoing reasons, Defendant John Cronin respectfully requests that this Court enter summary judgment in his favor with respect to all Counts of the Plaintiff's Amended Complaint.

Respectfully Submitted,
DEFENDANT JOHN CRONIN,
By his Attorneys,
THOMAS F. REILLY
ATTORNEY GENERAL

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V.

CERTIFICATE OF SERVICE

I, Jean M. Kelley, Assistant Attorney General, hereby certify that I have this day, September 21, 2005, served the foregoing **Motion of Defendant John Cronin for Summary Judgement Under F.R.C.P.56; Memorandum and Statement of Reasons in Support of Motion; Statement of Undisputed Facts; Exhibits A-E of the Statement of Undisputed Facts; and Certificate Of Service** upon all counsel of record by Facsimile and mailing a copy, first class, postage prepaid, to:

Daniel S. Sharp, Esquire
WHITFIELD, SHARP & SHARP
196 Atlantic Avenue
Marblehead, MA 01945

Jean M. Kelley
Assistant Attorney General
Trial Division